

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
POLICE OFFICER MARIAM HAMAD)	No. 07 PB 2673
STAR No. 10603, DEPARTMENT OF POLICE)	
CITY OF CHICAGO,)	
RESPONDENT)	(CR No. 1000908)

HEARING OFFICER'S MEMORANDUM
ON THE RESPONDENT'S MOTION TO DISMISS

This case arises out of charges filed with the Police Board of the City of Chicago by the Superintendent of Police against Police Officer Mariam Hamad, Star No. 10603, on December 18, 2007, alleging that Officer Hamad violated Rule 1 of the Rules of Conduct of the Chicago Police Department in that on May 15, 2000, she signed the name of John Finnigan, deceased, on an application for Duplicate Nevada Certificate of Title, and that on March 28, 2000, she signed the name of John Finnigan, deceased, on an Application for Vehicle Title with the Illinois Secretary of State. The Superintendent contends that Rule 1, prohibiting violation of a law or ordinance, was violated in that Officer Hamad's conduct was forgery under 720 ILCS 5/17-3(a)(1) and/or (a)(2). The Department also contends that the foregoing conduct violates Rule 2 in impeding the Department's efforts to achieve its policy and goals and/or bringing discredit on the Department.

Officer Hamad has moved for the dismissal of this case because: 1) the charges are barred by the statute of limitations imposed by Section 6.1(D) of the Agreement between the Fraternal Order of Police Chicago Lodge 7 and the City of Chicago; 2) the charges are barred by the doctrine of *res judicata* or collateral estoppel since the present action arises out of the same

events and claims that were part of the charges brought previously by the Superintendent against Officer Hamad in Police Board Case No. 05 PB 2579, decided after five days of hearing in 2006; and 3) it is inequitable as the City failed to disclose the tortured history of Police Officer Jerome Finnigan, who was a witness upon whom the Superintendent relied in the 2006 hearing.

Officer Hamad's first and third arguments for dismissal can be easily decided. Neither has merit. Section 6.1(D) of the FOP Agreement provides that no complaint or allegation shall be brought on the basis of events which occurred more than five years prior to the date of the charges, unless the Superintendent specifically authorizes such charges in writing. The events at issue in the present December 2007 charges occurred in 2000. The Superintendent, however, has provided the October 24, 2006, memo of Assistant Deputy Superintendent Debra Kirby of the Internal Affairs Division to Superintendent Philip J. Cline, which requested authorization to proceed against Officer Hamad pursuant to Section 6.1(D), since the events were more than five years old. Superintendent Cline provided his written approval to initiate the investigation (Ex. 6, attached hereto). Thus, the new charges are not barred by Section 6.1(D) of the FOP Agreement since the Superintendent did authorize such charges in writing.

Officer Hamad's equitable argument for dismissal is not supported by any cited legal authority. In any event, as the Superintendent argued, Officer Finnigan's testimony in the 2006 hearing had nothing to do with the misconduct that Officer Finnigan is separately alleged to have engaged in. Moreover, since the conduct upon which Officer Hamad was found guilty of in her prior hearing arose from actions which she admitted to have taken, the effect of failing to disclose Officer Finnigan's actions at issue in separate proceedings cannot be viewed as prejudicial. No facts or law, thus, support dismissal of the current charges against Officer

Hamad on this ground.

Officer Hamad's *res judicata* argument presents a more persuasive basis for dismissal.¹ On October 4, 2005, the Superintendent filed charges with the Police Board against Officer Hamad that included the allegations that from May 26, 2000, through April 19, 2001, she violated 625 ILCS 5/4-104(a) by possessing without authority a certificate of title for a 1986 Ford Taurus belonging to deceased John Finnigan, and on or about April 19, 2001, she violated 625 ILCS 5/3-703 by displaying in this car, which was in her possession, a temporary registration permit which was not properly issued and/or was otherwise used in an unlawful manner. The Police Board found her guilty of the foregoing allegations on July 20, 2006.

Officer Hamad's current motion to dismiss the December 2007 charges against her are based on the contention that the new charges arise from the same claims that served as the basis for her conviction in July 2006, and are thus barred by *res judicata*. In support of this argument, Officer Hamad relies upon LaSalle Bank v. Village of Bull Valley, 355 Ill.App.3d 629 (2nd Dist. 2005). Bull Valley establishes that:

res judicata serves as a bar against prosecution of a second action between the same parties upon the same claim or demand, it is conclusive not only as to every matter that was offered to sustain or defeat the claim, but as to any matter that might have been offered for that purpose.

Id., at 635. While the Superintendent argues that the claims from the first prosecution and the

¹ While Officer Hamad argues that *res judicata* or collateral estoppel apply here, only the doctrine of true *res judicata* is applicable. As a technical matter, *res judicata* encompasses both what is termed "true *res judicata*" and collateral estoppel. "True *res judicata*" is the doctrine of "claim preclusion," which Officer Hamad seeks to invoke in this case. Collateral estoppel is a related doctrine often referred to as "issue preclusion," prohibiting re-litigation of a material question decided in a related case. Hayes v. State Teachers Certification Bd., 359 Ill.App.3d 1153, 1161-62 (5th Dist. 2005). *Res judicata* bars "all matters that were offered to sustain or defeat the claim in the first action, as well as all matters that could have been offered for that purpose." Id., at 1161, quoting Arvia v. Madigan, 209 Ill.2d 520, 533 (2004).

second are different, i.e., the first prosecution was for unlawful possession of the car title and registration permit while the second is for forgery in obtaining the car title and registration permit, the unlawful possession in the first prosecution was predicated on the forgery used in obtaining the title and permit. As Officer Hamad notes, the documents used by the Superintendent to establish the forgery in the current charge were offered as exhibits in the prior prosecution, Superintendent Ex. 19 (application for duplicate Nevada certificate of title) and Joint Ex. 8 (also Superintendent Ex. 20) (Illinois application for vehicle title). More to the point, the Superintendent's attorney in closing argument in the 2006 hearing specifically said Officer Hamad's forgery was the unlawful conduct leading to possession of the title documents:

But the promissory note has nothing to do with whether she forged and notarized a document after forging a signature. I mean, that's what she did here, Mr. Johnson. This is illegal. . . . A police officer who signs a deceased person's name and dates it a year after he dies doesn't know she is doing something wrong? This is an illegal act, and she knew it when she did it. . . . Instead, she submitted a document with a forged signature on it for someone who had been deceased for a year to try and get the title. . . . This is forgery. I mean, this is a plain act of forgery. This is an illegal act, and she did this in order to get this car that she so desperately wanted – or in order to get the title to a car that she so desperately wanted. . . . So I think this is pretty clear evidence that she possessed the title without authority. They wouldn't have sent that to that address if they didn't have an application signed by the owner, who was John Finnigan. So they looked at this. They didn't know he was dead for a year. This is how she got the title. So did she possess it without authority? Absolutely. That's what this shows.

June 22, 2006, Hamad hearing transcript, at pp. 533-37, attached hereto.

As noted by the Superintendent in his brief, the bar of *res judicata* “extends to the claims that were actually decided in the first action, as well as any matters that could have been decided in that suit.” Superintendent Br. at 14, citing Bagnola v. SmithKline Beecham Clinical Lab., 333 Ill.App.3d 711, 717 (1st Dist. 2002). The Superintendent concedes that administrative

proceedings where an agency is acting in a judicial capacity are accorded *res judicata* effect.

City Br. at 15. There is no dispute that a final judgment exists in Officer Hamad's first case, as neither side appealed.

The rationale behind *res judicata* is to provide finality and to prevent the prolonged piecemeal litigation of cases which is a waste of judicial resources. Hayes, 359 Ill.App.3d at 1161. That rationale has particular application here where the city now seeks to re-raise a claim that was a part of the prior prosecution of Officer Hamad.²

For the foregoing reasons, Officer Hamad's motion to dismiss should be granted.

Respectfully submitted,



Thomas E. Johnson
Hearing Officer

² Although the administrative proceedings before the Board are clearly not criminal prosecutions, the rationale behind the compulsory joinder rule for criminal prosecutions provides additional support for the dismissal of the current charges against Officer Hamad. The underlying charges against Officer Hamad in the 2005 and 2007 claims at issue here are predicated on criminal violations of Illinois law. 625 ILCS 5/4-104(a) and 625 ILCS 5/3-703 in the 2005 charge and 720 ILCS 5/17-3(a)(1) and/or (a)(2) in the 2007 charge. In People v. Davis, 373 Ill.App.3d 351, 355 (1st Dist. 2007), the court noted the compulsory joinder provision of the Criminal Code which states in relevant part, "[i]f the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution . . ." The court further noted:

The supreme court also noted that in enacting the compulsory joinder provision, the legislature attempted to alleviate the fundamental unfairness that results when the State holds repeated trials for the same illegal conduct, a practice which had troubled the conscience of the courts and the legislature. [citation omitted] The supreme court continued by stating that 'the fact that multiple offenses arise from distinct, but related, acts in the course of single incident is irrelevant for purposes of compulsory joinder.'


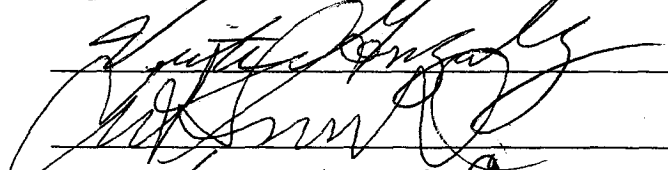
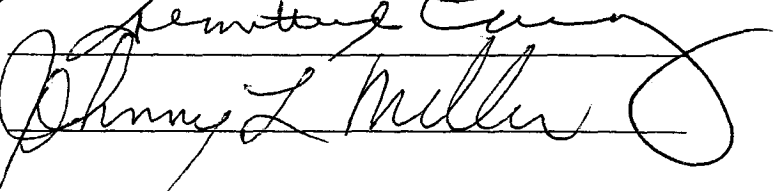
Id., at 356.

ORDER

The Police Board of the City of Chicago has read and reviewed the Respondent's motion to dismiss, the Superintendent's response, the certified transcription of the hearing on the motion held on January 29, 2008.

IT IS HEREBY ORDERED that, for the reasons set forth above in the Hearing Officer's memorandum, the Respondent's motion to dismiss the charges in Police Board Case No. 07 PB 2673 is granted, and that the Respondent, Police Officer Mariam Hamad, Star No. 10603, be and hereby is restored to her position as a police officer, and to the services of the City of Chicago, with all rights and benefits, effective December 19, 2007.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21st DAY OF FEBRUARY, 2008.

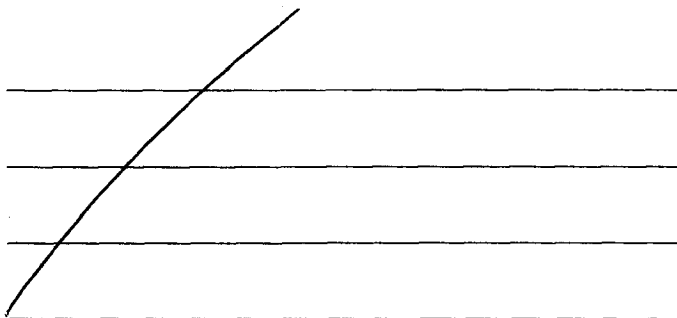
Attested by:



Executive Director
Police Board

DISSENT


The following members of the Board hereby dissent from the order issued by the majority of the Board.



RECEIVED A COPY OF THE

FOREGOING COMMUNICATION

THIS 27 DAY OF FEB, 2008.



SUPERINTENDENT OF POLICE

Office of the Superintendent
Internal Affairs Division

24 October 2006

TO: Philip J. Cline
Superintendent

FROM: Debra Kirby
Assistant Deputy Superintendent
Internal Affairs Division


**SUBJECT: Authorization to Initiate CR Investigation Pursuant to Fraternal
Order of Police Contract Article 6.1 D**

I am seeking approval to initiate a CR investigation. While at Police Board Hearing #05-2579 regarding CR #270735, P.O. Mariam Hamad #10603 admitted that she signed her deceased boyfriend's name to obtain a duplicate Nevada Certificate of Title for his vehicle. Additionally, she herself notarized that document. These allegations were not originally addressed in CR #270735 due to an inability to obtain a copy of the Nevada Certificate of Title.

In light of the seriousness of the charges, I am requesting authorization to initiate a complaint register investigation in this matter. As the allegations are more than five years old, the investigation may not proceed unless authorized by the Superintendent.


Debra Kirby
Assistant Deputy Superintendent
Internal Affairs Division

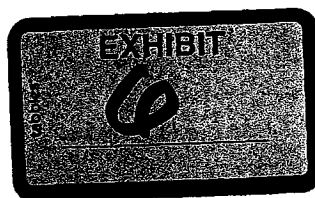
Approved:



Philip J. Cline
Superintendent

DK/baj

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1 knows they are doing something wrong.

2 But aside from that fact, if you compare the
3 signature to what's on that promissory note, it's
4 very clear that either she signed the promissory note
5 as well, or she was trying very carefully to imitate
6 John Finnegan's signature.

7 So she knew very well what she was doing
8 when she signed John Finnegan's name on this docu-
9 ment, notarized it, and sent it to the Nevada DMV.

10 HEARING OFFICER JOHNSON: What about her claim
11 that the car was collateral under the note.

12 MS. JEWELL: I think that this goes back to --
13 her claim that the car was collateral on the note
14 goes back to the issue of -- okay. Let me -- I think
15 we have covered the fact that she didn't have title.
16 She didn't own the vehicle. She was in possession of
17 a stolen vehicle, and she had no legal right to it.
18 We have gone over that a moment ago.

19 But the promissory note has nothing to do
20 with whether she forged and notarized a document
21 after forging a signature. I mean, that's what she
22 did here, Mr. Johnson. This is illegal.

23 HEARING OFFICER JOHNSON: I understand that.

24 MS. JEWELL: I'm sure that we all know that,

1 sitting here. And this is a police officer.

2 So for -- Officer Hamad claimed to be pretty
3 unaware. She seems like a fairly intelligent person
4 to me, and I think that that came across in her
5 testimony. She has some -- she has several college
6 degrees.

7 She claimed to not really know -- be aware
8 of what was going on in several different instances
9 today, and it just wasn't believable. This is a
10 primary example.

11 I mean, come on. A police officer who signs
12 a deceased person's name and dates it a year after he
13 dies doesn't know she is doing something wrong? This
14 is an illegal act, and she knew it was when she did
15 it.

16 So whether or not she had a promissory
17 note -- again, that promissory note, she never took
18 any legal action to try to act on that promissory
19 note to try to obtain title to the car.

20 Instead, she submitted a document with a
21 forged signature on it for someone who had been
22 deceased for a year to try to get the title.

23 This is how she -- this is the action she
24 took.

1 HEARING OFFICER JOHNSON: I agree with you that
2 the Superintendent's 19 is problematic, but I just am
3 concerned that -- I mean, this car is -- at the time
4 all this is going on, at the time they retrieve it,
5 it's thirteen, fourteen, fifteen years old.

6 MS. JEWELL: I'm sure we are all sitting here
7 wondering why --

8 HEARING OFFICER JOHNSON: So the idea of either
9 opening a probate estate or initiating some litigation
10 in the Circuit Court to determine ownership, it
11 just -- I mean, that doesn't really happen.

12 MS. JEWELL: Mr. Johnson, we can't take the law
13 into our own hands, can we?

14 I mean, you know we can't. You have to
15 follow these legal procedures.

16 Whether it would have been practical or made
17 sense to do that for a car that Mariam Hamad is
18 claiming today was worth \$300? No, probably not.

19 I mean, probably it would have made more
20 sense just to give it back to the family and avoid
21 any kind of legal proceeding.

22 But obviously there was -- there's some bad
23 feelings between these parties; there is no question
24 about that.

1 And I think it's pretty clear that this car
2 was -- kind became a pawn in those bad feelings.

3 HEARING OFFICER JOHNSON: Right. I agree with
4 that.

5 MS. JEWELL: So her reasons for keeping the
6 car -- she claims it's the last thing she had of her
7 fiancée.

8 I don't know that a car is something someone
9 would keep as a sentimental reminder. I'm sure there
10 was something else he left at her apartment. I tend
11 to think that it was more a -- it was more a reflec-
12 tion of the bad feelings she had for the Finnegans,
13 just as they clearly had bad feelings for her.

14 I mean, I don't think it's -- it's under-
15 standable that there would be bitter feelings between
16 these people after that tragic event that occurred.

17 But she is a police officer. She doesn't
18 decide what -- she doesn't take the law into her own
19 hands. She knows what the laws are.

20 This is forgery. I mean, this is a plain
21 act of forgery. This is an illegal act, and she did
22 this in order to get this car that she so desperately
23 wanted -- or in order to get the title to a car that
24 she so desperately wanted.

1 HEARING OFFICER JOHNSON: Is she charged with --
2 I'm just looking at the charges.

3 Is she charged with forging it.

4 MR. KARDAS: No.

5 MS. JEWELL: She is charged with --

6 HEARING OFFICER JOHNSON: Being in possession --

7 MS. JEWELL: I don't think Mr. Kardas -- he will
8 get a chance to make this argument.

9 She is charged with possessing without
10 authority a certificate of title.

11 Well, this is how she got the title.

12 HEARING OFFICER JOHNSON: I see.

13 MS. JEWELL: So I think this is pretty clear evi-
14 dence that she possessed the title without authority.

15 They wouldn't have sent that to that address
16 if they didn't have an application signed by the
17 owner, who was John Finnegan. So they looked at
18 this. They didn't know he was dead for a year.

19 This is how she got the title. So did she
20 possess it without authority? Absolutely. That's
21 what this shows.

22 HEARING OFFICER JOHNSON: Wouldn't she have
23 wanted to get it in her name, though?

24 I mean, that would be -- if she was